5. REMARKS

Thorough examination of the application is sincerely appreciated.

According to the Office Action, claims 1, 2 and 5 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent 6,850,540 (Peisa et al). Further according to the Office Action, claim 3 was rejected under 35 USC 103(a) as being obvious over Peisa in view of U.S. Patent 6,813,506 (Song). Still further according to the Office Action, claim 4 was rejected under 35 USC 103(a) as being obvious over Peisa in view of Song and further in view of U.S. Patent 5,379,116 (Wada). In response, the rejections are respectfully traversed as lacking sufficient factual support.

In particular, on page 2 of the Office Action, the examiner alleges, among other things, that Applicant's claimed features (formerly in claim 2 and by this amendment incorporated into claim 1) are disclosed in col. 10, lines 29-56 of Peisa. The cited portion of the patent is reproduced below:

> "With reference now to FIG. 4, an exemplary method in flowchart form for allocating bandwidth resources to data flow streams between entities in the exemplary second layer architecture of FIG. 3 is illustrated generally at 400. The flowchart 400 is a flow diagram of a method of allocating bandwidth resources to, for example, the input flow streams of a MAC entity of the layer 2 of FIG. 3. Generally, an exemplary method in accordance with the flowchart 400 may follow the following steps. First, input flows are received at RLCs and the data is buffered (step 405). Information on buffer fill levels is passed to the MAC entity (step 410). After the information on buffer fill levels is passed, the fair MAC bandwidth share for each input flow is computed (step 415). The computed fair share of each is then adjusted by adding the contents of an associated backlog counter to the respective computed fair share (step 420). Once the computed fair shares have been adjusted, a TFC is selected from the TFC set to most closely match the adjusted fair shares (step 425). The RLC is next instructed to deliver packets to the MAC entity according to the selected TFC (step 430). The MAC entity may also schedule packets in accordance with the selected TFC (step 435). After packet scheduling, the traffic channels may be transported on the physical channel(s) (step 440). Once packet traffic has been transported, the backlog counters should be updated (step 445). The process may continue (via arrow 450) when new input flows are received at the RLCs, which buffer the data (at step.405)..

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It is respectfully submitted that the examiner is factually wrong. Nowhere in that portion or anywhere else in the patent does Peisa show or teach, among other things, Applicant's the transport format combination being selected that has the smallest distance with reference to a metric relating to the required transport format combination if the required transport format combination is not included in the set of prescribed transport format combinations, as now recited in claim 1. Peisa merely refers to a buffer fill level and the computation of the fair MAC bandwidth, but fails to teach or suggest Applicant's selection of the transport format combination that has the smallest distance with reference to a metric relating to the required transport format combination. Contrary to the assertions in the Office Action, Peisa's mere mentioning of the word "metric" is not equivalent to Applicant's metric, because Peisa's metric is different from Applicant's metric. Hence, any analogy between Peisa's metric and Applicant's metric is factually wrong and cannot be sustained on the record.

It is believed that the examiner broadly and impermissibly refers to a portion of the patent as allegedly describing Applicant's features. Applicant's representative reviewed the entire cited portion of the patent and fails to find such a disclosure, contrary to the examiner's remarks. Should the examiner maintain his rejection, he is respectfully requested to provide an affidavit indicating the alleged correspondence between Peisa's computation of the fair MAC bandwidth and Applicant's selection of the transport format combination that has the smallest distance with reference to a metric relating to the required transport format combination.

Pursuant to MPEP, Section 2131, to anticipate a claim, the reference must teach every element of the claim. As discussed above, Peisa is woefully deficient in teaching each and every element of Applicants' claim 1. It is, therefore, respectfully submitted that independent claim 1 is not anticipated by Stone. Withdrawal of the rejection is respectfully requested, as it cannot be

sustained legally.

Claim 5 depends from independent claim 1, which has been shown to be allowable over the prior art reference. Accordingly, claim 5 is also allowable by virtue of its dependency, as well as the additional subject matter recited therein. Applicant submits that the reason for the rejection of claim 5 has been overcome and respectfully requests withdrawal of the rejection and allowance of the claim.

With respect to claim 3, which depends from claim 1, Song is not relied upon by the examiner to teach those features lacking in Peisa as discussed above. Thus, Song fails to supplement Peisa to cure its deficiencies, and withdrawal of the rejection is respectfully requested.

With respect to claim 4, which ultimately depends from claim 1, Wada is not relied upon by the examiner to teach those features lacking in Peisa as discussed above. Thus, Wada fails to supplement Peisa to cure its deficiencies, and withdrawal of the rejection is respectfully requested.

In view of the above, it is respectfully submitted that Peisa, Song and Wada, either alone or in combination, do not anticipate or render obvious the present invention because the prior art references fail to teach or suggest all of the features of the present invention, as discussed hereinabove.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. If there are any questions, the Examiner is respectfully requested to call the undersigned attorney at the number listed below.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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